



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2012-0405]

RIN 1625-AA00; 1625-AA08

Safety Zone and Special Local Regulation; 2012 Macy's 4th of July
Fireworks and Spectator Viewing Areas, Hudson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone and temporary special local regulation (SLR) on the navigable waters of the Hudson River in the vicinity of New York, NY for the 2012 Macy's 4th of July Fireworks Display. The temporary safety zone and temporary SLR are intended to restrict certain vessels from portions of the Hudson River before, during and immediately after the fireworks event. This regulation is necessary to provide for the safety of life on the navigable waters by controlling vessel movement and to establish public viewing areas for the fireworks event.

DATES: This rule is effective from 6:00 p.m. on July 4, 2012 until 11:00 p.m. on July 5, 2012. This rule will be enforced from 6 p.m. until 11 p.m. on July 4, 2012, and if the fireworks

display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0405]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354-4163, e-mail Kimberly.A.Farnsworth@uscg.mil.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

A. Regulatory History and Information

On November 9, 2011, we published a final rule entitled "Special Local Regulations and Safety Zones: Recurring Events in Captain of Port New York Zone" in the Federal Register (76 FR 69613). In that rulemaking, the Coast Guard established a permanent safety zone for the annual Macy's 4th of July Fireworks, listed in Table 1 to 33 CFR 165.160, entitled Macy's 4th of July Fireworks.

On March 23, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulation; Macy's Fourth of July Fireworks Display Spectator Viewing Areas; Hudson River; New York, NY" in the Federal Register (77 FR 16978). We received no comments on the proposed rule. No public meeting was requested, and none was held.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistics of the

event for this year were not finalized and provided to the Coast Guard with sufficient time to publish a NPRM followed by a final rule before the effective date of the event. Immediate action is necessary to ensure public safety due to the inherent hazards associated with launching fireworks and the explosive nature of the fireworks display. Therefore any delay in promulgating this regulation would reduce public safety and is therefore contrary to the public interest.

On Friday, April 27, 2012 the sponsor notified the Coast Guard that it intended to shift the fireworks display further south of the existing safety zone established in Table 1 to 33 CFR 165.160.

The sponsor advised that it intends to use four barges spaced 1500 feet apart in order to enhance safety and improve the visual effect of the fireworks for the 2012 Macy's 4th of July Fireworks Display. The sponsor further advised that because the command center for the event will be located at Pier 64 in the vicinity of Chelsea Piers, it was necessary to shift the fireworks display south on the Hudson River to allow for constant monitoring and unobstructed view of the entire display site and fallout areas. In previous years the command center was located further north in the vicinity of Pier 88 at the Intrepid Sea, Air and Space Museum. The sponsor requested that the Coast Guard

increase the size of the safety zone for the 2012 fireworks display.

Based on the information received regarding the placement of the launch platforms further south on the Hudson River, the fall out area is outside of the existing safety zone established in Table 1 to 33 CFR 165.160 and will not meet the needs of this year's fireworks display.

Therefore, to mitigate the potential danger to spectators, the Coast Guard is establishing a temporary safety zone and temporary SLR. Any delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in having this event occur on July 4, 2012 as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life or property. Also, a delay or cancellation of the fireworks event in order to allow for publication in the Federal Register is contrary to the public's interest in having this event occur as scheduled.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231, 1233; 46

U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones and special local regulations.

This regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display. Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris, especially burning debris falling on passing or anchored spectator vessels has the potential to result in serious injuries or fatalities. This regulation temporarily establishes limited access areas to restrict vessel movement around the location of the launch platforms to reduce the risk associated with the launch of fireworks.

C. Discussion of the Final Rule

The 2012 Macy's 4th of July Fireworks event is scheduled to occur on the waters of the Hudson River, New York, NY. This rule establishing a temporary safety zone and a temporary special local regulation is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display is scheduled to occur from 9:20 p.m. until 9:50 p.m. This rule will be enforced from 6:00 p.m. until 11:00 p.m. on July 4, 2012 in order to ensure that the area is clear of persons and vessels before the fireworks display begins, and to ensure that no explosive hazards remain after the fireworks display ends. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6:00 p.m. until 11:00 p.m. on July 5, 2012.

The COTP New York will establish five limited access areas within the boundary of the regulated area. Access to these areas will be restricted to vessels of a certain size. The five limited access areas are: (1) a "spectator area" designated ALPHA in which access is limited to vessels less than 20 meters in length (65.6 ft); (2) a "spectator area" designated BRAVO in which access is limited to vessels greater than 20 meters in length (65.6 ft); (3) a "buffer zone" around the fireworks launch barges, designated area CHARLIE, limited to all vessels tending the fireworks launch barges; (4) a "spectator area" designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6 ft); and (5) a "spectator area" designated ECHO in which access is limited to vessels less than 20 meters in length (65.6 ft).

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the limited time that vessels will be restricted from the zone. The temporary safety zone and special local regulation will only be in effect for approximately five hours during the evening. The Coast Guard expects minimum adverse impact to mariners from the zone's activation as the event has been extensively advertised to the public. Also, mariners may request authorization from the COTP New York or the designated representative to transit the zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York, NY during the effective period.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only five hours on a single-day during the late evening. Although the temporary safety zone and temporary special local regulation will apply to the entire width of the river, vessel traffic will be allowed to pass through the area with the permission of the COTP New York or the designated representative. The event is well known and extensive advertisement has allowed for public notification. Also, before the effective period, we will issue maritime advisories widely available to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone and a temporary special local regulation. This rule is categorically excluded from further review under paragraph 34(g) and 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.T01-0405 to read as follows:

§ 100.T01-0405 Special Local Regulations; 2012 Macy's 4th of July Fireworks Spectator Viewing Areas, Hudson River, New York, NY.

(a) Regulated Area. The regulated area includes all navigable waters of the Hudson River bounded by a line drawn from position 40° 46' 39.48"N, 073° 59' 27.06"W (West 66th Street, New York, NY), west to position 40° 46' 56.58"N, 074° 00' 12.04"W (North of Pier 9, Weehawken, NJ), then south along the New Jersey shoreline to position 40° 46' 8.78"N, 074° 00' 54.12"W (north east corner of Hanley Towers, Weehawken, NJ), then east to position 40° 45' 51.55"N, 074° 00' 10.85"W (pier 84, New York, NY), then along the Manhattan shoreline north to the point of origin; as well as all navigable waters of the Hudson River bounded by a line drawn from position 40° 44' 33.25"N, 074° 01' 38.48"W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ), east to

position 40° 44'29.41"N, 074° 00'43.64"W (Pier 54, New York, NY), south along the Manhattan shore line to position 40°43'36.09"N, 074°00'54.13"W, (Holland Tunnel Ventilator, Spring Street), and west to position 40°43'42.78"N, 074°01'35.92"W, (Holland Tunnel Ventilator, Jersey City, NJ), then north to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined above, the following are individually defined areas subject to specific requirements:

(1) Area ALPHA: all navigable waters of the Hudson River south of a line drawn from position 40° 46'56.58"N, 074° 00'12.04"W (North of Pier 9, Weehawken, NJ), east to position 40° 46'39.48"N, 073° 59'27.06"W (West 66th Street, New York, NY), and north of a line drawn from position 40°46'34.23"N, 074°00'36.81"W (Port Imperial Ferry Terminal, Weehawken, NJ), east to position 40°46'14.64"N, 073°59'55.29"W (Pier 94, New York, NY) (NAD 83).

(2) Area BRAVO: all navigable waters of the Hudson River south of a line drawn from position 40° 46'34.23"N 074° 00'36.81"W (Port Imperial ferry terminal, Weehawken, NJ), east to position 40° 46'14.64"N, 073° 59'55.29"W (Pier 94, New York, NY), and north of a line drawn from position 40° 46'8.78"N, 074° 00'54.12"W (north east corner of Hanley Towers, Weehawken, NJ),

east to position 40° 45'51.55"N, 074° 00'10.85"W (Pier 84, New York, NY) (NAD 83).

(3) Area DELTA: All navigable waters of the Hudson River north of a line drawn from position 40° 44'5.78"N, 074° 01'38.48"W (Hudson Tunnel Station Tower, Hoboken, NJ), then east to position 40° 44'02.97"N, 074° 00'42.48"W (Charles Street Pier, New York, NY), and south of a line drawn from position 40° 44'29.41"N, 074° 00'43.64"W (Pier 54, New York, NY), then west to position 40° 44'33.25"N, 074° 01'38.48"W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ) (NAD 83).

(4) Area ECHO: All navigable waters of the Hudson River north of a line drawn from position 40° 43'42.78"N, 074° 01'35.92"W (Holland Tunnel Ventilator, Jersey City, NJ), east to position 40° 43'36.08"N, 074° 00'54.13"W (Holland Tunnel Ventilator, Spring Street, New York, NY), and south of a line drawn from position 40° 44'05.78"N, 074° 01'38.48"W (Hudson Tunnel Station Tower, Hoboken, NJ), east to position 40° 44'02.97"N, 074° 00'42.48"W (Charles Street Pier, New York, NY) (NAD 83).

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector NY, to act on his or her behalf. The designated representative may be on an official

patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector New York.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Special local regulations.

(1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or the designated representative.

(2) Vessels are authorized by the COTP or the designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i): Area ALPHA access is limited to vessels less than 20 meters (65.6 ft) in length.

(ii) Area BRAVO access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iii) Area DELTA access is limited to vessels greater than 20 meters (65.6 ft) in length.

(iv) Area ECHO access is limited to vessels less than 20 meters (65.6 ft) in length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector NY at (718) 354-4356 (Sector NY Command Center) or the designated representative via VHF channel 16 to obtain permission to do so.

(6) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector NY or designated representative.

(7) The COTP Sector NY or designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) Enforcement period. This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2012, and if the fireworks display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2012.

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703, 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

4. Add § 165.T01-0405 to read as follows:

§165.T01-0405 Safety Zone; 2012 Macy's 4th of July Fireworks, Hudson River, NY.

(a) Regulated area. The following area is a temporary safety zone: all navigable waters of the Hudson River bounded by a line drawn east from position 40° 46' 08.78"N, 074° 00' 54.12"W (north east corner of Hanley Towers, Weehawken, NJ); to position 40° 45' 51.55"N, 074° 00' 10.85"W (Pier 84, Manhattan, NY); thence south along the Manhattan shoreline to position 40° 44' 29.41"N, 074° 00' 43.64"W (Pier 54, Manhattan, NY); then west to position 40° 44' 33.25"N, 074° 01' 29.48"W (Stevens Institute of Tech Tower, Castle Point, Hoboken, NJ); then north along the New Jersey shoreline and back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector NY, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector New York.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Regulations.

(1) The general regulations contained in 33 CFR 165.23 apply. In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP New York or the designated representative.

(2) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or the designated representative.

(3) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area should contact the COTP Sector NY at (718) 354-4356 (Sector NY Command Center) or the designated representative via VHF channel 16 to obtain permission to do so.

(5) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector NY or designated representative.

(6) The COTP Sector NY or designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) Enforcement period. This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2012. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6:00 p.m. until 11:00 p.m. on July 5, 2012.

Dated: June 12, 2012

G. P. Hitchen,
Captain, U.S. Coast Guard
Acting Captain of the Port New York

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